

REMARKS

Applicant has amended claims 1, 3-7, 9-13 and 15. Applicant respectfully submits that these amendments to the claims are supported by the application as originally filed and do not contain any new matter. Therefore, the Office Action will be discussed in terms of the claims as amended.

The Examiner has rejected claims 1-7, 9-13 and 15 under 35 USC 112, first paragraph, stating that the claims contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains to make and/or use the invention.

In reply thereto, Applicant has amended the claims and respectfully submits that claims 1, 3-7, 9-13 and 15 comply with the requirement of 35 USC 112, first paragraph, since they are directed toward a material for promoting spleen cell colony formation after hematopoietic cell transplant post radiation.

Next, the Examiner has rejected claims 1-7, 9-13, and 15 under 35 USC 112, second paragraph. In view of the above amendments, Applicant respectfully submits that claims 1, 3-7, 9-13 and 15 comply with 35 USC 112, second paragraph.

The Examiner has rejected claims 1-7, 9-13 and 15 under 35 USC 102 as being anticipated by Takebe et al., stating that Takebe et al. discloses all of the elements of the present invention and particularly while Takebe '161 does not contain a table, the process appears to be the same and it would produce the same concentration.

In reply thereto, Applicant would like to first point out that Applicant's invention is for a material for promoting spleen colony formation after hematopoietic cell transplant post radiation; while Takebe et al. '161 is a heath promoting component useful in improving liver or cardiac function and as an anti-inflammatory. Still further, Applicant directs the Examiner's attention to Fig. 1 of Applicant's application and Fig. 1 of Takebe et al. '161. Applicant respectfully submits that the process shown therein is different. In particular, in Takebe et al. '161 the lactic acid bacteria is mixed in with the koji starter in the mixing step. In contrast thereto, in Applicant's invention only the koji starter is added at the mixing step. Still further, the lactic acid bacteria may be added in Applicant's invention after the addition of water and before hydrolysis. Clearly, Takebe et al. '161 does not disclose such addition of lactic acid bacteria. Accordingly, Applicant respectfully submits that it cannot be assumed that the concentrations produced would

be the same and again Applicant points out that in Takebe et al. '161 it does not state what concentrations are produced.

In view of the above, therefore, Applicant respectfully submits that Takebe et al. '161 does not disclose each and every element of Applicant's invention as claimed and claims 1, 2-7, 9-13 and 15 are not anticipated by Takebe et al. '161.

The Examiner has further rejected claims 1-7, 9-13 and 15 under 35 USC 102 as being anticipated by Kelly et al., stating that Kelly et al. teaches a material comprising isoflavone aglycone wherein the aqueous extract is further concentrated and wherein said isoflavone aglycone is comprised of 95% daidzein (genistein:daidzein=1:19 in claim 13).

In reply thereto, Applicant has carefully reviewed Kelly et al. and respectfully submits that at col. 6, lines 6-8 it points out certain ratios as follows:

"It is also preferred that the ratio of genistein and/or its methylated derivative biochanin A to daidzein and/or its methylated derivative formononetin is between 1:2 to 2:1."

In other words, Applicant respectfully submits that Kelly et al. suggests that the diadzein would be present in an amount from about 30-60%. Also, Applicant respectfully submits that Kelly et al. is directed to a health supplement while Applicant's invention is now directed toward a material for promoting spleen colony formation after hematopoietic cell transplant post radiation. Still further, Applicant respectfully submits that claim 13 in Kelly et al. is open-ended claim and while it states that the phyto-oestrogen comprises genistein:daidzein present in a ratio of about 1:19, it does not limit the total mount of aglycones such as glycosides and glycitein present in the product and only defines the ratio of the genistein to the diadzein. Finally, Applicant respectfully submits that Kelly et al. does not define whether the ratio is by weight, volume, etc.

In view of the above, therefore, Applicant respectfully submits that claims 1, 2-7, 9-13 and 15 are not anticipated by Kelly et al.

The Examiner has rejected claims 1-7, 9-13 and 15 under 35 USC 102(f) because Applicant did not invent the claimed subject matter since USP 6,303,161 to Takebe et al. anticipates the instant claims with the different inventive entity.

In rely thereto, Applicant respectfully submits that as stated in the arguments above, Takebe et al. '161 does not anticipate Applicant's invention and particularly the process shown

therein is different and the use of the material is different. Accordingly, Applicant respectfully submits that claims 1, 2-7, 9-13 and 15 are not properly rejected under 35 USC 102(f).


Applicant further respectfully and retroactively requests a three month extension of time so as to respond to the Office Action. Please charge Deposit Account No. 11-1445 in the sum of \$1020.00 as the fee.

In view of the above, therefore, it is respectfully requested that this Amendment be entered, favorably considered, and the case passed to issue.

Please charge any additional costs incurred by or in order to implement this Amendment or required by any requests for extensions of time to KODA & ANDROLIA DEPOSIT ACCOUNT NO. 11-1445.

Respectfully submitted,

KODA & ANDROLIA

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Name

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